

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2862 of 1993

with

SP. CIVIL APPLICATIONs No 2861/93, 2863/93,
7786/91, 7787/91, 7788/91, 8574/91, 8576/91, 8610/91,
8611/91, 8612/91, 8770/91, 8771/91, 8772/91, 8773/91,
8989/91, 1366/93, 7880/90, 8227/90, 8228/90, 8229/90,
8230/90, 4126/91, 5121/91, 6892/91 and 7785/91.

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHESHKUMAR S BHOI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2861, 2862, 2863 of 1993
MR PH PATHAK for Petitioner
MR PRASHANT G DESAI for Respondents
2. Special Civil Application No 7785, 7786, 7787, 7788, 6892/91
MR SHAILESH PARIKH for Petitioners
MR PRASHANT G DESAI for Respondents
3. Special Civil Applications No 8574, 8770, 8771, 8772,

8773 of 1991

MR KH BAXI for Petitioners

MR PRASHANT G DESAI for Respondents

4. Special Civil Applications No 8576/91 and 1366/93

MR DC RAVAL for Petitioners

MR PRASHANT G DESAI for Respondents

5. Special Civil Applications No 8610, 8611, 8612/91

MR GM JOSHI for Petitioners

MR PRASHANT G DESAI for Respondents

6. Special Civil Applications No 8989, 4126 of 1991

MRS KETTY A MEHTA for Petitioners

MR PRASHANT G DESAI for Respondents No. 1, 2

None present for other Respondents

7. Special Civil Applications No 7880, 8227, 8228, 8229, 8230 of 1990

MR JAGDISH S YADAV for Petitioners

MR PRASHANT G DESAI for Respondents

8. Special Civil Application No 5121 of 1991

MR YS LAKHANI for Petitioner

MR PRASHANT G DESAI for Respondents No. 1, 2

None present for other Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/97

C.A.V. JUDGEMENT

1. As common questions of law and facts have arisen in all these special civil applications, the same are being taken up for hearing together and are being disposed of by this common order.

2. The petitioners in all these special civil applications are working on the post of Deputy Mamlatdar in the Revenue Department of the Government of Gujarat. They have been promoted to this post from the post of Circle Inspector or Clerk. In some of the cases, the order of reversion of the petitioners have been passed from the post of Deputy Mamlatdar and in some of the cases, the order has not been passed, but having the apprehension of their reversion, they approached this Court. The dispute has also been raised in many of the petitions regarding the assignment of seniority to the petitioners in the feeder cadre.

3. It is not in dispute that all the petitioners were given the promotion on the post of Deputy Mamlatdar only on adhoc and temporary basis. They have not been given the regular promotion after being adjudged suitable by the Departmental Promotion Committee for the post of Deputy Mamlatdar.

4. The persons appointed on the post of Clerk/Clerk-cum-Typist had preferred Special Civil Applications No. 101/87, 7786/90, 7808/90 before this Court and those special civil applications have been disposed of on 24th March, 1992 whereby it has been ordered to treat the seniority of Clerk/Clerk-cum-Typist from the date of their initial appointment. So in all those petitions, the seniority list of Clerk/Clerk-cum-Typist were in dispute. In compliance of the aforesaid judgment of this Court, a provisional seniority list of Clerk/Clerk-cum-Typist came to be published by the respondents on 15-7-1992. This provisional seniority list was prepared on the basis of the position prevailing as on 1-1-1991. The objections were invited against this provisional seniority list. A copy of this provisional seniority list, as what has been stated in reply to the affidavit and not controverted by the respondent by filing rejoinder, was given to all the petitioners but none of them have raised any objection with regard to their position as shown therein as on 1-1-1991. This provisional seniority list has been finalised and final seniority list has been published on 20-2-1993. None of the petitioners in these special civil applications had challenged that final seniority list by amending these special civil application. So, the position as it comes out is that the petitioners accepted their position as it has been shown in the final seniority list dated 28th February, 1993. I consider it to be appropriate to make reference to the Sp. C.A. No.1366/93. During the course of arguments, the counsel Shri D.C.Raval counsel for the petitioner filed a purshis, "draft amendment" which is dated 21st July, 1994. The amendment which is sought in the special civil application does not pertain to challenge to the final seniority list dated 20th February, 1993. Moreover, this amendment which has been prepared on 21st July, 1994 has been filed after about three years, cannot be allowed on the ground of delay and laches. In fact, this grievance has not been there with the petitioner otherwise I fail to see any justification to keep this draft amendment in pocket for all these years and propose to file before this Court at the final stage of hearing of the matter. The prayer made for the proposed amendment in the special

civil application is declined.

5. The learned counsel for the respondent-State Government and the Collector concerned, Shri Prashant G. Desai made a statement before this Court that as per the position which has been assigned to Clerk and Clerk-cum-Typist or other feeder posts in the final seniority list dated 20th February, 1993 many of the petitioners are not likely to be reverted from the post of Deputy Mamlatdar which they are presently holding on urgent adhoc basis. However, certain petitioners may be reverted to make a room for the seniors on the basis of their position as reflecting in the final seniority list dated 20th February, 1993. However, the counsel for the respondent-State, Shri Prashant G. Desai made a statement that none of the petitioners shall be reverted from the post of Deputy Mamlatdar which they are holding on adhoc and urgent temporary basis without giving any notice and an opportunity of hearing. However, Shri Desai submitted that this course will only be adopted in the case of those petitioners who are placed below in the seniority list aforesaid and the persons senior to them are to be given the promotion on urgent temporary basis but however this statement is not binding as in case on regular promotion has been made on the basis of considering the cases of all the eligible candidates for promotion to the post of Deputy Mamlatdar and if the petitioners or any of them are not found suitable for promotion then they have to be reverted and in that case it was not required to give any notice or opportunity of hearing.

6. The counsel for the petitioners are in agreement with the aforesaid statement made by the learned counsel for the respondent-State. However, the counsel for the petitioners submitted that in the case of reversion to be made of some of the petitioners from the post of Deputy Mamlatdar which they are holding on urgent temporary basis on the ground other than they have not been found suitable for promotion by the Departmental Promotion Committee, the order of reversion in the case of those persons may not be given effect to for 15 days from the date of despatch of the same. To this prayer, the counsel for the State Government has not objection.

7. In the result, all these special civil applications are disposed of in terms of the statement made by the learned counsel for the State Government. However, in case where any of the petitioners is reverted from the post of Deputy Mamlatdar other than on the ground that he or they have not been adjudged suitable

for promotion by the Departmental Promotion Committee for the post of Deputy Mamlatdar, the order of reversion may not be given effect to for 15 days from the date of despatch of the same. The Special Civil Applications and Rule stand disposed of in the aforesaid terms with no order as to costs.

zgs/-